

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

THOMAS P. GORDON,  
SHERRY L. FREEBERY,  
JANET K. SMITH

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CRIMINAL NO. 05-cr-00541-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

December 18, 2006

Counsel for the government has filed a “Motion to Admit Evidence of Fieldstone Scheme” and a separate “Motion to Admit Evidence (“SOS Message”)), seeking a ruling in advance of trial that various items are admissible in evidence and will be received in evidence at the trial (now scheduled for February 5, 2007). Admissibility of evidence is, needless to say, best determined in the context of the trial. All that can be stated at this point is that properly-authenticated evidence which tends to prove the allegations of those counts of the Indictment which are the subject of the trial (i.e., applicable to the defendant on trial, and not previously severed for separate trial) will be received in evidence. Indeed, the parties are urged to try to reach agreement as to the admissibility of much of this evidence.

The government’s motions have now provided information to the defendants concerning the evidence the government will seek to present at trial, as contemplated by Fed. R. Crim. P. 12(b)(4)(A), thus enabling defense counsel to seek suppression of the evidence, if grounds for suppression exists.

The parties have agreed that the defendant Freebery is to be tried separately from the defendant Gordon. Obviously, there may be evidence which would be admissible against one

but not the other of these defendants. And, as the parties are aware, the counts charging the defendant Freebery with making false statements to financial institutions are severed from the balance of the Indictment. At present writing, no final determination has been made concerning the trial of the defendant Janet K. Smith. Presumably, someone will request a ruling which clarifies that matter.

The government's motions will therefore be denied, without prejudice to renewal at trial.

An Order follows.

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ORDER

AND NOW, this 18<sup>th</sup> day of December 2006, upon consideration of the government's "Motion to Admit Evidence ("SOS Message")" and the government's "Motion To Admit Evidence of the Fieldstone Scheme," IT IS ORDERED:

That the Motions are DENIED, without prejudice to renewal at trial, in conformity with the views expressed in the accompanying Memorandum.

BY THE COURT:

/s/ John P. Fullam  
John P. Fullam, Sr. J.